

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TRISTIAN SMITH, f/k/a MONICA SMITH,
Plaintiff
v.
ST. JUDE'S RANCH,
Defendant

Case No. 2:18-cv-00784-JAD-GWF

ORDER

12 This matter is before the Court on Plaintiff's Application to Proceed *in Forma Pauperis*
13 (ECF No. 1), filed April 30, 2018.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to her application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

20 || II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Under Rule 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” “[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-

1 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949
2 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). Mere
3 “labels or conclusions” or a “formulaic recitation of the elements of a cause of action” will not
4 suffice. *Id.* Neither will naked assertions that are devoid of further factual enhancement. *Id.*

5 Plaintiff’s one-page complaint provides the Court with no factual basis for her claims
6 whatsoever. It appears to allege a claim against St. Jude’s Ranch for “continually sent [sic]
7 persons after [Plaintiff] to steal [her] drivers licence [sic] personal belongings and beat and
8 moleste [sic] and annoying remarks” and discriminate against her based on her race. *Complaint*
9 ECF No. 1-1. Moreover, the Complaint fails to indicate the Court has jurisdiction over the
10 subject matter. *Id.* This is simply inadequate and the Court cannot conduct a screening of
11 Plaintiff’s complaint. Therefore, the Court will dismiss Plaintiff’s complaint with leave to
12 amend. Plaintiff is advised that she must provide the court with a proper factual basis for her
13 claims in her amended complaint. In addition, Plaintiff’s complaint appears to be alleging civil
14 rights violations pursuant to 42 U.S.C. § 1983, against a private actor who is not subject to suit
15 under that Act.

16 42 U.S.C. § 1983 does not reach private conduct, regardless of how discriminatory or
17 wrongful it may be. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Even involving
18 cases where there is extensive state funding and regulation of a private activity, “the mere fact
19 that a business is subject to state regulation does not by itself convert its action into that of the
20 State for purposes of the Fourteenth Amendment.” *Jackson v. Metropolitan Edison Co.*, 419 U.S.
21 345, 350 (1974); *see also Rendell-Baker*, 457 U.S. 830 at 842-43.

22 If Plaintiff elects to proceed in this action by filing an amended complaint, she is
23 informed that the court cannot refer to a prior pleading in order to make her amended complaint
24 complete. Local Rule 15-1 requires that an amended complaint be complete in itself without
25 reference to any prior pleading. This is because, as a general rule, an amended complaint
26 supersedes the original complaint. *See Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir.
27 2011); *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended
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1 complaint, the original pleading no longer serves any function in the case. Therefore, in an
2 amended complaint, as in an original complaint, each claim and the involvement of each
3 defendant must be sufficiently alleged. Accordingly,

4 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis* is
5 **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars
6 (\$400.00).

7 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to
8 conclusion without the necessity of prepayment of any additional fees or costs or the giving of
9 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the
10 issuance of subpoenas at government expense.

11 **IT IS FURTHER ORDERED** that Plaintiff's Complaint is **dismissed** without prejudice,
12 with leave to amend. Plaintiff shall have until **June 4, 2018** to file an amended complaint
13 correcting the noted deficiencies.

14 Dated this 4th day of May, 2018.

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17 GEORGE FOLEY, JR.
18 UNITED STATES MAGISTRATE JUDGE
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